

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BARRY HARRIS,

Petitioner,

v.

CALVIN JOHNSON, *et al.*,

Respondents.

Case No. 3:20-cv-00695-MMD-WGC

ORDER

This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Petitioner Barry Harris, who is incarcerated at Nevada's Ely State Prison. The Court received Harris' habeas petition (ECF No. 1-1), along with a financial certificate (ECF No. 1-2) and a motion for appointment of counsel (ECF No. 1-3), on December 14, 2020.

Harris has not paid the filing fee for this action, and he has not filed an application to proceed *in forma pauperis*. The Court will not require Harris to pay the filing fee, or file an *in forma pauperis* application, until after counsel appears for him.

State prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances indicate that appointed counsel is necessary to prevent due process violations. See *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam). The court may, however, appoint counsel at any stage of the proceedings if the interests of justice so require. See 18 U.S.C. § 3006A; see also Rule 8(c), Rules Governing § 2254 Cases; see also *Chaney*, 801 F.2d at 1196. Harris' petition indicates that he is serving a sentence of life in prison with the possibility of parole after 15 years. Further, it appears that the petition may raise relatively complex issues, and Harris likely will not be able to adequately litigate this action

1 without counsel. The Court therefore finds that appointment of counsel is in the interests  
2 of justice. The Court will grant Harris' motion for appointment of counsel and will appoint  
3 the Federal Public Defender for the District of Nevada ("FPD") to represent him.

4 The Court has examined Harris' petition pursuant to Rule 4 of the Rules Governing  
5 Section 2254 Cases in the United States District Courts and determines that it merits  
6 service upon the respondents. The Court will order the petition served upon Respondents,  
7 and will direct Respondents to appear, but will not require any further action on the part  
8 of Respondents at this time.

9 It is therefore ordered that the Clerk of the Court is directed to separately file the  
10 Petition for Writ of Habeas Corpus (ECF No. 1-1) and the Motion for Appointment of  
11 Counsel (ECF No. 1-3).

12 It is further ordered that Petitioner's Motion for Appointment of Counsel (ECF No.  
13 1-3) is granted. The FPD is appointed to represent Petitioner. If the FPD is unable to  
14 represent Petitioner, because of a conflict of interest or for any other reason, alternate  
15 counsel will be appointed. In either case, counsel will represent Petitioner in all federal  
16 court proceedings relating to this matter, unless allowed to withdraw.

17 It is further ordered that the Clerk of the Court is directed to electronically serve  
18 upon the FPD a copy of this Order, together with a copy of the Petition for Writ of Habeas  
19 Corpus (ECF No. 1-1).

20 It is further ordered that the FPD will have 30 days from the date of this Order to  
21 file a notice of appearance, or to indicate to the Court its inability to represent Petitioner  
22 in this case.

23 It is further ordered that the requirement that Petitioner pay the filing fee for this  
24 action or file an application to proceed *in forma pauperis* is suspended. The Court will set  
25 a deadline for payment of the filing fee or filing of an application to proceed *in forma*  
26 *pauperis* after counsel appears for Petitioner.

27 It is further ordered that the Clerk of the Court is directed to add Aaron Ford,  
28 Attorney General of the State of Nevada, as counsel for Respondents.

1 It is further ordered that the Clerk of the Court is directed to electronically serve  
2 upon Respondents a copy of the Petition for Writ of Habeas Corpus (ECF No. 1-1), and  
3 a copy of this Order.

4 It is further ordered that Respondents will have 30 days from the date of this Order  
5 to appear in this action. Respondents will not be required to respond to the habeas petition  
6 at this time.

7 DATED THIS 15<sup>th</sup> Day of December 2020.

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11 MIRANDA M. DU  
12 CHIEF UNITED STATES DISTRICT JUDGE  
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